

**LABOR
COMMISSION
STATE OF UTAH**



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ON - THE - JOB

R. LEE ELLERTSON, Editor-in-Chief

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COMMISSIONER'S CORNER

**By R. Lee Ellertson, Commissioner
(See page one)**

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Two Funds Assist Utah's Injured Workers

Utah's dedicated and well-trained workforce is one of the most valuable and essential resources for which Utah is recognized. Needless to say, the safety of this workforce is our ultimate goal. Unfortunately, there are on occasion accidents which occur in the workplace. The good news, however, is that Utah has in place a workers' compensation system which has been recognized as a model in the nation. Utah's costs to employers are among the lowest in the nation, while benefits paid to injured workers are handled in a fair and responsible manner.

An essential part of the workers' compensation system often overlooked, and probably even unknown by many, is the two trust funds administered by the Utah Labor Commission, as charged by the legislature and funded by surcharges placed on workers' compensation insurance premiums. These two funds are known as the Employer's Reinsurance Fund (ERF) and the Uninsured Employers' Fund (UEF). Because these funds are probably the best kept secret in the state, I thought I should explain a little of their history and purpose.

Employers Reinsurance Fund

The ERF was re-named in 1988 from the Second Injury Fund. The ERF's purpose is to pick up the liability on injured workers that had been deemed permanent and totally disabled after the employer and their insurance carrier had paid benefits for six years. This fund predates the institutional memory of anyone currently employed at the Commission, but goes back to 1953 and maybe further than that. In 1988, the Legislature, in addition to renaming it, made minor changes in its purpose. In 1994, the legislature made

major revisions to the Workers' Compensation Act. Acknowledging how badly the ERF was under-funded, the legislature did a major overhaul to the fund. Changes were made to limit the fund's liability only to pay benefits to those injured workers whose injuries occurred prior to July 1, 1994. Injuries that occurred after that date were the responsibility of the employer and their insurance carrier for the life of the claim.

The ERF is currently funded by a 9¼ percent surcharge on the employers' workers' compensation insurance premium which is the maximum allowed by statute. However, beginning January 1, 2005, this cap will be reduced to 7¼ percent. At the present time, the fund has a liability of approximately \$292 million and a fund balance of \$33.5 million, which far exceeds the statutory minimum fund balance of \$14.5 million. Also, by statute, the fund must be fully funded by 2025. The recently completed actuarial study has projected that this mandate will be accomplished.



Is a..... Four-letter Word

By Larry a. Patrick, Administrator, UOSH

OK. For you purists, I will concede that OSHA is not really a "word", but is actually an acronym for Occupational Safety and Health Administration. However, you have to admit that "OSHA is a Four-letter Acronym" just doesn't have much zing as a title. Now that I have dealt with that, let me proceed.

Recently I was having a conversation with a young man and it got around to what our jobs were. He works for a local cable television company and I told him I work for Utah-OSHA (UOSH). His response? "Larry, you know that no one really likes you." Since the possibility that he was referring to me personally is hopefully remote, I'll continue under the belief that the "you" he spoke of was UOSH.

He's right. I believe that most Utahns are, at best, neutral toward UOSH and some (perhaps many) would prefer that we simply disappear. Before you get your hopes up, let me assure you that is not going to happen. Even if the decision was made to do away with the state agency, federal OSHA would come in and provide occupational safety and health regulation.

When you hear OSHA, most think of stringent rules, unannounced inspections and large fines. All of that is true because we are a regulatory agency with a strong mandate established in Utah Code which states legislative intent in 34A-6-102 "*to provide a coordinated state plan to implement, establish and enforce occupational safety and health standards as effective as the ...*" (federal standards).

The purpose of this article is to acknowledge that OSHA is a four-letter word and to give you some other four-letter words that describe things we do with the hope that you might change your perception of us.

SAFE - Everything we do in Utah-OSHA is driven by the desire to make Utah workplaces safe. In fact, I have challenged Division personnel to look critically at everything we do with regard to how it impacts workplace safety. That challenge will be put into action as the new federal fiscal year begins because a significant part of our new strategic plan is focused on analyzing Division effectiveness so we can increase our impact on Utah workplace safety.

HELP - Perhaps not as well known as our enforcement mandate is a mandate in federal and Utah law to provide

help (assistance) to employers to establish effective safety and health programs in their workplaces. We have an entire organization (UOSH Consultation) chartered for the sole purpose of providing this assistance. In fact, they CANNOT (by law) enforce Utah's safety and health laws or even inform our enforcement personnel of any safety and health violations they might observe. We also offer compliance assistance using our Compliance personnel.

Let me provide you an example of this assistance - in May of this year I received a call from a person associated with the nursing home industry. She wanted someone to give her organization a presentation on OSHA and regulations that applied most directly to her industry. A Compliance team took this task and ran with it. They met with the organization, determined their needs and then developed a program to address those needs. Recently they provided the training (and if I might boast a little) - did an excellent job. Although I agree with that assessment, it actually came from those who received the training. It should be noted that the UOSH personnel involved are all compliance officers who have the authority to cite and fine employers. They gladly removed those "hats" and provided assistance.

Although I could continue, I will close with one final four-letter word which describes UOSH services - - **FREE**. We provide these consultative and assistance services at no cost.

If you are interested in applying some of these four-letter words to your workplace, give us a call at any of the following numbers:

Compliance Assistance - (801) 530-6900

Consultation - (801) 530-6855

Technical Advice - (801) 530-6897

You can browse our website: www.uosh.utah.gov

Of course you are also welcome to call me at (801) 530-6898 and I'll invoke another four-letter word and as the commercials for a local convenience store say "I'll **hook** you up".

The “Rules” Corner

Pursuant to legislative authority, the Labor Commission has authority to adopt rules to assist in the administration of certain programs within the Commission’s jurisdiction. Pursuant to that authority, the Commission has engaged in the following rule-making activity.



I. RULES UNDER CONSIDERATION:

RULE NUMBER	DESCRIPTION	STATUS
Rule 602-2-1 Rule 602-2-2 Adjudication	Procedure: Complete update and revision of procedural rules for adjudicating workers’ compensation claims.	After approval by Advisory Council and public hearing, submitted for publication. Scheduled to become effective 1/02/04
R612-4-2 Industrial Accidents	Sets premium assessment rates for both the Uninsured Employers’ Fund and Workplace Safety Account at .25%, and sets the Employers’ Reinsurance Fund’s assessment rate at 9.25%. These rates are unchanged from last year.	After approval by Advisory Council, and public hearing, the rule has been submitted for publication. Scheduled to become effective 1/02/04
R616-2-3 R616-3-14 Safety	Incorporation of ASME codes: These amendments to the Safety Division’s Boiler and Elevator rules incorporate by reference the yearly addenda to the ASME Boiler and Pressure Vessel Code (2001) and clarify inspection standards for remodeled hydraulic elevators.	Published in Utah Bulletin; scheduled to become effective 11/17/04.
R602-2-4 Adjudication	Attorneys fees: In workers compensation cases, allows attorneys to charge an hourly fee not to exceed \$125 for up to four hours of consultation and review. Also allows an attorney to recover costs, to be deducted from the applicant ’s award.	Will be submitted for publication in Utah Bulletin

II. RULES RECENTLY ADOPTED:

RULE NUMBER	DESCRIPTION	STATUS
R612-2-5 Industrial Accidents	Medical fees: Increases fees paid to medical providers for some medical and restorative services provided to injured workers. The rule also updates references to the RBRVS and Medical Fee Guidelines to the 2003 editions.	Published in Utah Bulletin on 6/1/03; became final on 7/2/03.
Rule 614-1-4 UOSH	Postponement of reporting requirements: Because federal OSHA has postponed the effective date of certain reporting requirements for musculoskeletal disorder and hearing loss. To maintain consistency, the Utah Occupational Safety and Health Division (UOSH) proposes the same changes to Utah’s standards. Note: Requirement to mark MSD column removed effective 7/15/03.	Published in Utah Bulletin on 5/1/03; became final 6/03/03.

Rule 616-2-3 Safety	Update of Boiler Inspection Code: The Safety Division proposes to adopt the 2002 addenda to the 2001 National Boiler Inspection Code. The 2001 Code has previously been adopted by the Commission. The 2002 addenda makes only technical changes to the 2001 Code.	Published in Utah Bulletin on 5/1/03; became final 6/03/03.
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III. REPEALED RULES

RULE NUMBER	DESCRIPTION	STATUS
R612-2-22 Industrial Accidents	Medical records: Addressed requirements for releasing medical records for workers' compensation purposes in light of new federal rules under the Health Insurance Portability and Accountability Act ("HIPAA").	Promulgated as an emergency rule on 6/23/03. Allowed to expire on 10/18/04.

Workers' Compensation News

By Joyce A. Sewell, Director, Industrial Accidents

The Industrial Accidents Division has been fielding a lot of questions from employers, medical providers, insurance carriers and injured workers related to the release of medical records since the federal rule restricting the release of medical records (HIPAA) went into effect in April, 2003.

Workers' Compensation is exempt from the federal HIPAA rules if the state has a rule related to the release of medical records. The state rule in place regulating the release of medical records, R612-2-22, relates only as to who and what records the parties are entitled to. Medical providers treating injured workers are required by state law and Labor Commission rules to send the "Initial Report of Injury/Illness", Form 123, to the insurance carrier of the employer, the Labor Commission, and the injured worker - the employer is not entitled to a copy of this report without a specific release from the injured worker. The medical provider is also required by law and rule to send all documentation relating to the work-related injury or illness to the insurance carrier when the injured worker is claiming workers' compensation benefits.

The Labor Commission has a new form, Form 046, titled "Authorization to Disclose Health Information" which an injured worker must sign when the insurance carrier is seeking information regarding past medical history in order to determine

if the injury or illness is compensable, or if the recommended treatment is related to the injury or illness.

The Division has also been receiving numerous calls from medical providers and employers asking if an employer may pay a medical provider directly rather than have the medical provider send an injury report and a bill to the employer's insurance carrier. An employer is **not allowed**, by law, to pay any medical provider directly. The laws related to this are: 34A-2-201(Workers' Compensation Act); and insurance law, 31A-22-1010. The insurance law states that an insurance carrier shall not allow an employer to participate in the payment of claims or losses, except through a reimbursement back to the insurance carrier. Workers' Compensation law has **no** provision which allows an employer to pay any of the claim, even if the care that was provided was "first aid" only. Anytime an injured workers sees a physician and claims it is work related, even if only for first aid, the employer is to send the "Employer Report of Injury or Illness", Form 122, to the Labor Commission, its insurance carrier, and give a copy of the report to the injured worker. The Labor Commission actively monitors employer injury reports, matching the reports to medical reports, and has the ability to fine an employer who refuses to send an injury report when requested to do so by the Industrial Accidents Division.



Housing Discrimination Based on a Tenant's Source of Income is Illegal!

By Sherrie Hayashi, Director, Utah Antidiscrimination and Labor Division

Individuals and families in need of affordable housing in Utah often encounter negative feedback, false assumptions, and discrimination while negotiating living arrangements.

One of the mandates of the State Fair Housing Office is to educate both tenants and property owners of the fair housing laws. It is imperative that all of those concerned know their rights and responsibilities.

Tenants have the responsibility to take proper care of apartments they rent, while fair housing guidelines state that property owners should not discriminate against tenants because they receive their income from some type of governmental assistance, including housing supplements. It is illegal for property owners/managers to indicate that they do not accept individuals who are on housing assistance.

The Division receives a number of phone calls from individuals who state that they have been informed that Section 8 Vouchers or housing certificates are not accepted. Property owners should make legitimate inquiries into the ability of a potential renter to be a good tenant. Verification of income,

personal references, and other relevant criteria are considered to be fair practices. Refusing to rent to someone based solely on the source of their income is illegal.

Property owners should be advised that the best way to avoid a discrimination complaint is to treat all applicants equally, and to examine all policies to ensure that the policies are not discriminatory. The fair housing laws are not intended to prohibit a property owner from making legitimate inquiries into the ability of a potential renter to be a good tenant. Our concern is that the process be as fair as possible.

Besides being against the law, housing discrimination creates problems and stress for individuals and families that only serves to make finding a home more difficult.

The Utah Fair Housing Act also prohibits discrimination based upon race, color, sex, national origin, disability, religion, and having children under the age of 18. If you have any questions about the Utah Fair Housing Act, please contact the Utah Antidiscrimination and Labor Division at 801-530-6801 or 1-800-222-1238.

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handful of states that have such a fund. I think credit is due the Utah employers who were then, and are now, willing to fund such a program to take care of these injured workers. This fund is also funded by a surcharge on employers' workers' compensation insurance premiums. Currently it is $\frac{1}{4}$ of 1%. The statute places a cap on funding of $\frac{1}{2}$ of 1%. The fund currently has projected liabilities of approximately \$8 million and has a balance of a little over \$17 million making the

status of the fund in excellent financial condition. By statute it must maintain a minimum balance of about \$6 million.

The Legislature each year approves administrative expenditures from these two funds as recommended by the Labor Commission as a part of the appropriations process.

Utah employers should be commended for the dedication they have to caring for our injured workers and their willingness to provide benefits when the need arises. These two funds are important aspects of our workers' compensation system and provide assistance for our injured workers in an equitable and responsible manner.

Utah Labor Commission Utah Occupational Safety and Health Consultation Program

www.uosh.utah.gov



Safety and Health Achievement Recognition Program

The Utah Workplace Safety and Health Consultation Services Program, in conjunction with the Utah Occupational Safety and Health Division (UOSH), has a special program to recognize achievement by employers in workplace safety and health. The program is called **SHARP**, the Safety and Health Achievement Recognition Program. **SHARP** is oriented towards small, high hazard workplaces. Participation is open to

employers with fixed work sites of 250 employees or less.

Your business can be part of a very select

group of employers who voluntarily take the steps necessary to ensure their employees' health and safety. By developing a comprehensive health and safety management system that is the basis of **SHARP**, you will not only protect your workers, but also reduce workers' compensation costs and insurance premiums, improve employee morale, and increase productivity. These kinds of paybacks have been enjoyed by hundreds of small businesses across the nation. To help you get started, the Workplace Safety and Health Consultation Services Program will provide free guidance and technical services.

To participate as a **SHARP** candidate you must:

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1. Undergo a free, comprehensive health and safety consultation survey of your workplace.
 2. Correct all hazards identified by the consultant within reasonable time frames.
 3. Establish and maintain the basic elements of an effective health and safety management system.
 - C Management Leadership and Employee Participation in the development and operation of program policy, goals, objectives and activities.
 - C Worksite Analysis to identify hazards, review injuries and identify trends.
 - C Hazard Prevention and Control programs and procedures.
 - C Training in Safety and Health for employees, supervisors and managers.
 4. Commit in writing to the Workplace Safety and Health Consultation Services Program that you are willing to work with the consultant during a probationary year to achieve **SHARP** success.
 5. Notify the Consultation Program when major changes in processes or conditions occur that may result in new hazards.
 6. Request a second comprehensive survey at the end of the one year or longer probationary period to verify all **SHARP** requirements have been met.
 7. Maintain your Lost Workday Injury/Illness Rate below the national average for your SIC code.

Once you have completed the requirements of the probationary year, you will receive formal recognition from the Secretary of Labor, UOSH and the Utah Labor Commission. Because UOSH believes Safety and Health Management Programs require less governmental enforcement oversight, your company will be removed from UOSH's programmed inspection lists for a period of 12 months. Most insurance carriers will also recognize your **SHARP** achievement and qualify your company

for a premium reduction. **SHARP** recognition is an excellent marketing tool and positive image maker for your company and employees.

Developing a self-sustaining health and safety management system for your business, and participating in **SHARP** is a win-win proposition for all. For additional information, contact Utah Labor Commission Workplace Safety and Health Consultation department at (801) 530-6855.

Be the Best of the Best!

Sweet Candy Company wins Utah's First SHARP Award!

The Sweet Candy Company has been a well known name in fine confectionary in Utah for many years. They have the distinction of being Utah Occupational Safety and Health's (UOSH) first recipient of the prestigious Safety and Health Achievement Recognition Program Award (**SHARP**). The **SHARP** award is an extremely in-depth commitment by management to provide a safe and healthy workplace environment for their employees. Upper management, a dedicated safety director, and total employee involvement has enabled them to reduce their accident and injury rate well below the national average and be an exemplary company.

The award presentation took place at the Sweet Candy Company located at 3780 West Directors Row, Salt Lake City, Utah, in late September. The presentation was held at shift change to allow employees of both shifts to attend. R. Anthony Sweet - Owner of Sweet Candy, and F. David Pierce - Safety Director, represented the Sweet Candy Company and accepted the award from R. Lee Ellertson, Commissioner of the Utah Labor Commissioner. Larry A. Patrick - UOSH Administrator and Robert V. Newman - **SHARP** Coordinator were also in attendance.

Utah has several other candidates currently enrolled in the program and UOSH expects to present additional **SHARP** recognition awards in the near future. For more information, contact Utah Labor Commission Workplace Safety and Health Consultation at (801) 530-6855.

SHOPS SHOPS SHOPS

By Brian Halay, Assistant
Chief Boiler/Pressure Vessel Inspector

Have you ever walked by an air compressor on the show room floor at a department store and wondered what keeps it from blowing up? Or, who builds them? Or, how are they welded? The purpose of this article is to answer those questions. It takes involvement from many people to assure pressure vessel safety. Quality assurance is checked several times during fabrication, installation and continued use of the vessel.

Pressure vessels are built by code shops using the requirements of American Society of Mechanical Engineers (ASME) and National Board (NB) Codes, (construction and repair standards adopted by the State of Utah). During the fabrication process, the Authorized Inspector (AI), inspects the boiler or pressure vessel frequently. He has the responsibility of insuring that all welds meet Code and the welders are qualified. He also has the duty to insure that all necessary engineering and calculations are correct and all applicable codes have been followed. Once the fabrication is complete, the AI checks the vessel's integrity by either a non-destructive examination (x-rays, ultrasonic etc.) or a hydrostatic test (pressure retention).

The Safety Division also participates in assuring

Sweet Candy Company is presented with Utah's first SHARP award.

L to R: David Pierce, Safety Director - Sweet Candy Co. ; Larry Patrick, Administrator - UOSH; Commissioner R. Lee Ellertson; Anthony Sweet, Owner - Sweet Candy Company; Bob Newman, SHARP program Coordinator.



the quality of the vessels by conducting shop audits on manufacturer code shops every three years. An audit team, led by the Team Leader (a senior state inspector with appropriate qualifications), the AI Supervisor, and the AI reviews the shop's quality assurance program, welding/engineering program and records of past vessel fabrications. The audit not only involves review of procedures, but also includes observation of procedures being used in the shop. As an example of the detail of the audit the team will check eye exams of the personal performing the procedures involved in vessel fabrication.

Finally, once the vessel is installed for use, a Safety Division inspector performs yet another inspection for safety and code compliance. Upon passing this inspection, the vessel is assigned a Utah state

number and given a certificate of inspection and permit to operate. The Utah number provides the Safety Division a way to keep track of the vessel for its entire life.

Hopefully, this answers your questions on how safety is assured for the air compressors, and other pressure vessels, from design to installation in Utah or any other place in the world!!!